IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 130.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

FIRST NATIONAL BANK OF PAULS VALLEY, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

S. T. BLEDSOE,
J. B. THOMPSON,
Attorneys for Defendant in Error.

(21,113.)

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I.

The quotations from the answer of the defendants, set forth on pages 3 and 4 of the original brief for defendant in error, are taken from the original answer to the amended complaint appearing on pages 22 and 23 of the record. The language is identical with the amended answer to the first amended complaint, appearing on pages 26 and 27 of the record.

The allegation in the amended complaint (R., p. 18) is that the "said Susan E. Mays did *abandon* her contest, and "permit the said Jennie Lee Williams to take the said land

" in allotment, which she did, and the said land thereby be-
" came and is her separate property." The denial in paragraph 1 of the amended answer to the amended complaint is: "And they deny that the said Susan E. Mays did *with-*
" *draw* her contest and permit the said Jennie Lee Williams
" to take the said lands in allotment, and that by reason of
" the *withdrawal* of the said Susan E. Mays from said con-
" test that said land became and was the separate property
" of the said defendant, Jennie Lee Williams."

The denial is not at all responsive to the allegations contained in the complaint. That this is not a technical objection and presented to this court for the first time attention is called to the fact that in paragraph 3 of the demurrer to the amended answer and first amended complaint (R., 29-30), the plaintiff specially demurred to the part of the answer above set out, assigning as a reason for the insufficiency thereof that "the denial of a withdrawal is immaterial
" and does not deny the allegations contained in the com-
" plaint, and is drawn in such form, and that by "being
" joined to the other clauses it does not amount to a denial
" of any of the facts contained in said complaint."

Under the condition of the record, therefore, and the statutes in force in the Indian Territory at that time, there being no specific denial of the allegation that Susan E. Mays did abandon the contest, and that Jennie Lee Williams was thereby permitted to take the land in allotment, the allegation stands confessed.

It is insisted by counsel for the defendants that the second paragraph sufficiently charges facts to establish the illegality of the consideration for the note. The only allegation of fact in the last answer, if it may be *treated* as an allegation, in reference thereto, is the following language:

> "But these defendants allege and charge the truth
> " to be that sole and only consideration of said note,
> " as aforesaid, was the pretended and illegal sale of
> " certain lands situated near Maysville, in the Chick-

" asaw Nation, Indian Territory, by the said Susan E. " Mays, to the said Jennie Lee Williams, * * *" (R., 27).

Then follows the allegation that this was in violation of the Chickasaw and Choctaw supplemental agreement of 1902 and the "Atoka Agreement" of 1898. Attached to the answer, and as an exhibit to this paragraph, is the agreement which, it is claimed, constitutes the illegal conveyance. That conveyance is made by Susan E. Mays, an enrolled member of the Chickasaw Tribe by blood, to Jennie Lee Williams, an enrolled member of the tribe by blood, and S. L. Williams, an intermarried citizen of the tribe and a white man (R., pp. 12-13). The paper referred to is the quitclaim or relinquishment of the interest of Susan E. Mays "in and to the " possession of the lands and improvements situated" thereon, and to the proceeds due and to become due "from the sales of " town property, or my interest in the said townsite located " on the above-described premises" (R., 28).

This is the particular alleged illegal transaction complained of in paragraph 2 of the amended answer. It is submitted that under none of the authorities is this relinquishment invalid or in violation of law. It is insisted that the consideration of five thousand dollars ($5,000) is unreasonably large, in consideration of the amount of land involved. It is alleged in the amended complaint and admitted in the answer that the lands adjoin the town of Maysville. The record is silent as to the extent of the improvements thereon. They may have been worth more than the five thousand dollars ($5,000). That the location of the land, with reference to the town and the improvements thereon, were of such value that the defendants considered Susan E. Mays' interest therein worth five thousand dollars ($5,000) at the time of the settlement of the contest controversy is evidenced by the agreement of the parties, including the note and relinquishment.

It was contended that the case of *McLaughlin vs. Ardmore Loan and Trust Company* (95 Pac., 779), is authority for the contention made by plaintiffs in error. The evidence in that cause established that McLaughlin was "in possession of more in value than that of 320 acres of average allotable land in said nation than he could hold for himself and three children," and that the vendee was also a corporation incapable of owning or acquiring improvements upon lands of the Five Civilized Tribes. The court held this note void, because the evidence established that it was given directly for improvements upon an "excessive" holding.

The case of *Combs vs. Miller* (103 Pac., 590) was decided upon the same ground, and for the same reason; that is, in the answer to the suit on the note it was specifically pleaded that the improvements for which the note was given were upon lands actually held in excess of those held by plaintiff as his share of allotable land and of his allotment. Both of the last-mentioned decisions are in entire harmony with the decision of the Supreme Court of the State of Oklahoma in the case at bar. There is no allegation in the pleadings that Susan E. Mays held a single acre of land, in either the Choctaw or Chickasaw Nation, in addition to the lands in contest. If defendants had desired to tender an issue that the note was given for lands "excessively" held they should have pleaded the facts showing such to be the case. They did not undertake to do this, for the very evident reason that they could not truthfully do so. Therefore, all that part of the brief of defendants relating to that subject, appearing on pages 13-22 of the brief of defendants in error, is an argument without the slightest suggestion in the record of a foundation to support it.

Certain decisions of the Commission to the Five Civilized Tribes are cited on pages 15 and 16 of the brief of defendants to the point that the Commission to the Five Civilized Tribes did not recognize conveyances made by one member of a tribe to another member of the same tribe of improvements

upon tribal lands. That this contention is wholly without merit, reference is made to the various memorandum decisions appearing on pages 139-157 of the Tenth Annual Report of the Commission to the Five Civilized Tribes, being the report for the year 1903, and pages 188-193 of the Eleventh Annual Report of the Commission to the Five Civilized Tribes, being the report for the year 1904.

Counsel for defendants cannot hope to sustain their contention upon the record. If they hoped to do so, it would not have been necessary to undertake to divert the attention of the court to issues not raised in the record.

It is said by counsel for defendants that the allegations in the amended answer that the consideration of the note was the execution of the relinquishment, marked Exhibit "A," is in conflict with the allegation of the amended complaint that the consideration of the note was the abandonment of the contest. There is nothing at all inconsistent in these two allegations. The relinquishment would have very properly followed the execution of the note, as the evidence furnished by the contestant to the contestee of her consent that the contestee should take the lands in allotment.

Since the preparation of the original brief on behalf of defendant in error, a motion to dismiss the writ of error has been filed upon the ground that no Federal question is involved.

It is respectfully insisted that this contention is well taken in view of the authorities cited in the original brief of the defendant in error, and of the references herein made. This is also confirmed by the grounds assigned in the petition for removal, to wit:

> "that the consideration for said note was that the
> "payee thereof should cease to prosecute further and
> "abandon a certain contest then pending before the
> "Commissioner to the Five Civilized Tribes, in which
> "the payee herein was contestant, and the appellee
> "was contestee."

It is therefore respectfully submitted that the Supreme Court of the State of Oklahoma, as is evidenced by the decision in *Combs vs. Miller*, and *McLaughlin vs. Ardmore Loan and Trust Company*, has most carefully guarded and protected the interests of the Indians, and the administration by the Government of the United States of the property of the tribes, in the allotment thereof in severalty, where these questions have, in fact, been involved, but that they have declined to permit white men to avoid their obligations, while holding the benefits thereof, on the spurious plea of illegality of consideration; or to hold that to require them to pay their obligations for which they have received value, interferes with the administration by the Government of the affairs of the tribe.

Respectfully submitted.

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